

Statement of Findings

Number: _____



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CESAJ-RD-P (1145b)
SAJ-2007-1939 (IP-AWP)

MAR 04 2008

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and
Statement of Findings for the Above-numbered Permit Application

1. Applicant: FDOT Florida's Turnpike Enterprise
Attn: Catherine Bradley
P.O. Box 613069
Ocoee, Florida 34761

2. Location, Project Description, Existing Conditions: The proposed project is the widening of Florida's Turnpike (SR 91) from Beulah Road to State Road (SR) 50. The proposed project is located in Sections 19, & 25-30, Township 22 South, Range 27 East, Orange County, Florida. The on-site wetlands are hydrologically connected to Black Lake, Johns Lake, and Lake Apopka.

The applicant proposes to impact 14.1 acres of U.S. Army Corps of Engineers (Corps) jurisdictional wetlands and 1.36 acres of jurisdictional surface waters which include stormwater management ditches and areas capable of impounding water for the widening of Florida's Turnpike. An additional 1.86 acres of temporary impacts to wetlands will occur due to clearing activities. The project corridor is comprised of a mixture of upland land uses and forested wetlands systems. Upland land usage includes open land, citrus grove, hardwood conifer mixed forest, and maintained right-of-way. Thirteen (13) separate wetland systems occur within the project corridor and include herbaceous and forested systems. The systems range from medium-high quality to medium quality based on the vegetative composition and surroundings land use conditions.

Wetlands W-1, W-12, and W-13 are classified as forested hardwood communities composed of red maple, laurel oak, red bay, and mimosa. Midstory and ground cover includes immature Carolina willow, immature mimosa, pickerelweed, Boston fern, dog fennel, and primrose willow.

Wetlands W-4, W-5, W-10, and W-11 are classified as willow and elderberry communities composed primarily of Carolina willow and Florida elderberry. Midstory and ground cover includes primrose willow, immature Carolina willow, Florida elderberry, wax myrtle, chain fern, dog fennel, and caesarweed.

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Wetlands W-2 and W-3 are classified as mixed wetland forest communities composed of red maple, cypress, loblolly bay, and American elm. Mid story is comprised of primrose willow and Florida elderberry. Ground cover includes Virginia chain fern, swamp fern, wild taro, beggertick, and air potato.

Wetlands W-6, W-7, W-8, and W-9 are classified as freshwater marsh. These systems range from disturbed systems dominated by Carolina willow, primrose willow, and dog fennel to a 3 acre freshwater pickerelweed marsh system.

Wetland 1 is hydrologically connected to a roadside ditch which connects to small creek east of the project limits and ultimately Black Lake. OSW 1 maintains a OHWM and maintains an intermittent surface water flow between wetland 1 and a small creek off-site.

Wetland 2 is hydrologically connected to Black Lake and ultimately Lake Apopka. Wetland 3 is hydrologically connected to Black Lake. Wetland 4 is intermittently connected to Wetland 8 which is directly connected to Black Lake. OSW 10 is a upland cut ditch between wetlands 4 & 8 and considered a tributary because it connects wetlands to waters of the US. Wetland 5 is hydrologically connected to wetland 6 outside the turnpike right-of-way and ultimately connects to wetland 8 which is directly connected to Johns Lake. Wetland 7 is hydrologically connected to wetland 9 via OSW 13 and hydrologically connected to Lake Apopka. Wetland 9 is hydrologically connected to wetland 8 and Johns Lake. OSW 14 is a man-made ditch between wetlands 8 & 10 and considered a tributary because is connects wetlands to waters of the US. Wetland 10 is hydrologically connected to Wetland 8 which is connected to Johns Lake. Wetland 11 is hydrologically isolated and not connected to waters of the US. Wetland 11 does not have any interstate commerce connections and performs minimal wetland function due to its location within the landscape and the surrounding roadways. Wetlands 12 & 13 are hydrologically connected to Lake Apopka.

3. Project Purpose:

Basic: The widening of the existing Florida's Turnpike.

Overall: The widening of Florida's Turnpike from Beulah Road to SR 50 for the expansion of the existing four-lane roadway to a eight-lane roadway with the associated stormwater management facilities.

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4. Statutory Authority: Section 404 of the Clean Water Act (33 U.S.C. 1344).

5. Other Federal, State, and Local Authorizations Obtained or Required and Pending:

a. State Permit/Certification: The St. Johns River Water Management District (SJRWMD) permit number 4-095-20358-17 was issued on 12 February 2008.

b. Coastal Zone Management (CZM) consistency/permit: There is no evidence or indication from the State of Florida that the project is inconsistent with the Florida Coastal Zone Management Plan. Issuance of a SJRWMD permit certifies that the project is consistent with the CZM plan.

c. Other Authorizations: No information has been received regarding any other authorizations that may be required.

6. Date of Public Notice and Summary of Comments

a. The application was received on 4 April 2007. The application was considered complete on 12 April 2007. A public notice was issued on 16 April 2007, and sent to all interested parties including appropriate State and Federal agencies. All comments received on this application have been reviewed and are summarized below:

(1) Environmental Protection Agency (EPA): Did not respond to the public notice.

(2) U.S. Fish and Wildlife Service (FWS): Did not respond to the public notice.

(3) National Marine Fisheries Service (NMFS): By letter dated 17 May 2007, the NMFS had no objection to the proposed project.

(4) State Historic Preservation Officer (SHPO): By letter dated 1 May 2007, SHPO recommended that the Corps include a special condition in any permits issued to include the applicant fence off a 25-foot buffer zone around the Old Oakland African American Cemetery (8OR9567).

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(5) W.H.R. Corp. d/b/a Westwood Village, submitted comments via letter dated 30 April 2007. WHR Corp is concerned that Wetland W-2 on page 1 of 16 identified in the public notice would adversely affect their property if it were dammed during construction.

b. Applicant's response to the comments: WHR Corps comments were forwarded to the applicant via electronic mail dated 3 May 2007. The applicant responded 4 May 2007, stating the FDOT Drainage Manual and FDOT Temporary Drainage Handbook provide the requirement to maintain a 10-year flow through the box culvert during construction activities. Additionally, the contractor is required to maintain positive drainage throughout construction.

7. Alternatives:

a. Avoidance (No action, uplands, availability of other sites): This section of the SR-91 provides access to one of the world's largest concentrations of hotels and major tourist attractions. This segment of the corridor exhibits high vehicle occupancy rates, largely controlled by the tourist industry's family orientation. This section of the SR-91 is also a vital link in the transportation network of Orange County and the surrounding Central Florida region. SR-91 is one of the primary commuting corridors in the Central Florida region and connects the region's primary business and tourism centers. As substantial population and employment growth is expected through the year 2020, growth and congestion on SR-91 will also continue. This section of the SR-91 is expected to exceed capacity in 2020 by more than 30%. The no action alternative would not allow for project completion. The purpose of this project is to upgrade the SR-91 route to an eight-lane highway. Severe traffic congestion and the rising numbers of accidents result in regular delays to the transportation system. These issues, coupled with a growing population, constitute the most serious transportation problems affecting the region today. This project involves the widening of an existing roadway. There are no alternative locations that would satisfy the basic project purpose.

b. Minimization (modified project designs, etc.): The project has been minimized to the maximum extent possible that would allow the applicant to achieve the basic project purpose. There are no other designs or alignments which will perform the intended function of the road system and produce less impacts.

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Minimization of wetland impacts has been a prime focus of the design alternatives analysis. Wherever avoiding wetlands was not possible, impacts to wetlands were minimized to the greatest extent possible based on safe and sound engineering judgment and construction constraints. Ponds were placed within uplands and along right-of-way alignments wherever possible. The use of silt screens, floating turbidity barriers, hay bales, and other discharge prevention measures during construction will minimize impacts to wetlands within the vicinity of the project.

The following provides a list of minimization measures completed by the applicant.

- 1) Primarily widening to the inside median of an existing alignment to avoid new or excessive additional wetland impacts for a new or relocated alignment.
- 2) Steepened (e.g., 2:1, 3:1) side slopes with use of guardrail where appropriate to reduce roadway footprint.
- 3) Selective clearing and grubbing to limit disturbance of vegetation to areas required for facility construction and equipment operation to the maximum practicable extent.
- 4) Placement of sound wall along roadway shoulder barrier wall to avoid approximately 0.62 acre of impacts to Wetland 3.
- 5) Implementation of "smart box" water control structure at Pond B location (County Road 545/Avalon Road). Diverts treated runoff back to the east to maintain hydrology of Wetland 2 (directly connected to Black Lake system).
- 6) Location of floodplain compensation pond outside of Wetland 8 in former upland citrus grove. Since it will be graded to seasonal high water elevation, it will assume the hydrology of the surrounding Wetland 8, resulting in the recruitment/addition of approximately 7.26 acres of new wetland area.
- 7) Use of compensatory stormwater treatment, and co-location of floodplain compensation pond and stormwater Pond C to avoid the need for excavating additional collector swales through wetland areas along the Turnpike Mainline, thereby avoiding additional impacts.
- 8) Maximize use of existing treatment ponds within State Road 50/Turnpike interchange to provide stormwater treatment and groundwater recharge within western portion of project area.
- 9) Locate Pond E-1, and E-2 outside of Wetland 13, and Pond E-3 with only a minimal "clip" impact to currently disturbed portion of Wetland 13 within Turnpike right-of-way. Avoided impacts to Wetland 12 across the Turnpike (on the south side) at this location.

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10) Use of maintenance of traffic (MOT) phasing providing for lane closures, which allows construction access and operation from the existing roadway and side slopes, rather than the wetland/toe-of-slope area to the maximum practicable extent.

11) Implementation of erosion and sediment-control measures as required by the FDOT's Standard Specifications for Road and Bridge Construction to preserve off-site water quality, as well as form and function of adjacent wetlands to the maximum practicable extent. Additional adherence to state-mandated water quality certification.

c. Compensatory Mitigation (Wetland enhancement, creations, etc.): The applicant has proposed compensatory mitigation to offset all unavoidable impacts to Corps jurisdictional wetlands. Wetland impacts will be mitigated pursuant to the Senate Bill 1986 Rule - Section 373.4137 Florida Statutes (F.S.). The applicant has completed a Wetland Rapid Assessment Procedure and determined the direct impacts would cause 8.92 (3.02 forested and 5.9 non-forested) functional units of loss. The Corps has evaluated secondary impacts extending 25 feet beyond the direct impacts. Secondary impacts will total 2.72 acres and total 1.52 functional units of loss. The applicant will be required to replace 10.44 functional units.

The compensatory mitigation plan # 406146 is defined in the 2008 SJRWMD FDOT MITIGATION PLAN, Mitigation Project Group SJ49. Mitigation will include the preservation and enhancement of uplands and wetlands as part of a future acquisition within Drainage Basin 2.

8. Evaluation of the 404(b)(1) Guidelines: The proposed project has been reviewed in accordance with the 404 (b)(1) Guidelines. The review shows that all the alternatives have been reviewed and it has been adequately demonstrated that the proposed alternative is the least environmentally damaging and only practicable alternative considering cost, existing technology and logistics. It would not cause or contribute to violations of State Water quality standards, jeopardize the existence of any endangered species or impact a marine sanctuary. No significant degradation would be expected and all appropriate and practicable steps have been taken to minimize impacts.

9. Public Interest Review:

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a. Corps analysis of comments and responses: All comments received in response to the public notice have been considered in the following public interest review.

b. All public interest factors have been reviewed, including but not limited to the effects the work might have on conservation, economics, esthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, land use, recreation, water quality, safety, and consideration of property ownership. It has been determined that the proposed work will not adversely impact any of the public interest factors.

c. Describe the relative extent of the public and private need for the proposed structure or work: Public needs include increased travel safety.

d. Describe the practicability of using reasonable alternative locations and methods to accomplish the objective of the purposed work where there are unresolved conflicts as to resource use: There are no unresolved conflicts regarding resource use.

e. Describe the extent and permanence of the beneficial and/or detrimental effects which the proposed work is likely to have on the public and private uses to which the area is suited: The beneficial effects for public transportation may include an increase in public safety, increased carrying capacity of the roadway and the more effective movement of vehicular traffic. The increased carrying capacity may also facilitate intrastate/interstate commerce.

f. Threatened or Endangered Species: The proposed project will not jeopardize the continued existence or critical habitat of any threatened or endangered species.

The applicant has conducted extensive endangered species surveys and has observed the presence of federally endangered species within the project corridor. The applicant has determined that the proposed project will impact wetlands which may be used by the wood stork for foraging areas. The applicant has also indicated the proposed project contains suitable habitat for the threatened Eastern Indigo snake. The Corps has determined that with the inclusion of the Eastern Indigo snake standard protection measures with any permit issued, the proposed project

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"may affect, not likely to adversely affect" the Eastern Indigo snake. The Corps has also determined that with the inclusion of wetland compensation for the loss of wetland habitat, the proposed project "may affect, not likely to adversely affect" the wood stork. Active bald eagle nest Orange County Nest # OR039 and OR-018 occur within 660 feet of the proposed roadway. The Corps has determined the project may affect, but is not likely to adversely affect the bald eagle. The Corps requested concurrence with its determinations pursuant to Section 7 of the Endangered Species Act.

FWS responded via letter dated 31 May 2007, stating they concur with the Corps determination for the indigo snake, wood stork, and bald eagle. FWS recommended implementation of the National Bald Eagle Management Guidelines.

g. Essential Fisheries Habitat (EFH): The proposed project should have no effect on EFH as the project is located outside of EFH areas. NMFS has indicated the wetlands proposed for impact contribute functions to downstream habitat; however with the inclusion of wetland compensation within the same drainage basin no impacts to EFH are expected. NMFS did not provide any EFH conservation recommendations, but did recommend the use of Best Management Practices including silt screens and hay bails during construction.

h. Corps Wetland Policy: The proposed wetland alteration is necessary to realize the project purpose and should result in minimal adverse environmental impacts. The benefits of the project would outweigh the minimal detrimental impacts. The project would result in a no-net loss of wetland functions and values. Therefore the project is in accordance with the Corps wetland policy.

i. Cumulative and Secondary Impacts: Cumulative and secondary impacts would not be unacceptable. Filling of wetlands at this project site would not set precedent for additional filling activities in waters of the United States to occur. The applicant will provide compensatory mitigation within a federally approved mitigation bank whose service area incorporates the same drainage basin as the impacted wetlands which will ensure cumulative impacts will not occur.

The applicant will incorporate best management practices to ensure secondary impacts will not occur to downstream habitats.

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j. Corps Comments and Responses: The applicant is required to maintain pre and post stormwater flows during construction ensuring adverse impacts will not occur to W.H.R. Corp. d/b/a Westwood Village properties.

10. Determinations:


a. Finding of No Significant Impact (FONSI). Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be required.

b. Compliance with 404(b)(1) guidelines. Having completed the evaluation in paragraph 7 above, I have determined that the proposed discharge complies with the 404(b)(1) guidelines.

c. Public interest determination: I find that issuance of a Department of the Army permit is not contrary to the public interest.

d. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

PREPARED BY:



ANDREW W. PHILLIPS
Project Manager

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REVIEWED BY:

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for LOREN M. MASON
Chief, Special Projects and
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CF:
CESAJ-RD-PE

APPROVED BY:

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